

State of Rhode Island
And
Providence Plantations

Commissioner of
Education

Student P. Doe

v.

North Smithfield School Committee

DECISION

Held: Student Doe's mother has not proven that she and her daughter reside in North Smithfield. There are no facts in this record that would legitimize Student Doe's attendance at North Smithfield High School during the 2010-2011 school year, such that the Commissioner should order that she be allowed to complete her senior year under the provisions of R.I.G.L. 16-64-8. However, for reasons set forth in this decision, this matter is remanded to the North Smithfield School Committee and to the district's liaison for homeless children for a determination of whether this student qualifies to re-enroll in North Smithfield on the basis that she should be protected by the provisions of the Final State Regulations for the Education of Homeless Children and Youth.

DATE: December 23, 2011

Travel of the Case:

On September 12, 2011 Student Doe's mother, through her attorney, filed a request for a residency hearing, indicating in her letter that her daughter had recently been notified that she was not eligible to continue at North Smithfield High School. At that time, counsel also sought an interim protective order directing the district to allow this student to continue in attendance pending the outcome of the hearing. Hearing dates were offered to the parties and the matter was then scheduled by agreement for September 29, 2011. After testimony began counsel for both parties requested that further hearing be stayed in order to provide them with an opportunity to verify certain information that had come to light and that had the potential to resolve the issue of Student Doe's residency.

On November 8, 2011 counsel for Student Doe's mother requested that the hearing be reconvened and on December 1, 2011 additional evidence was taken in this matter. The parties made closing statements at the conclusion of the hearing, and the record closed upon receipt of the transcript on December 9, 2011. Decision in this matter has been expedited because at the end of the December 1, 2011 hearing it came to light that Student Doe, who is seventeen years of age, has not been attending school at all.

ISSUES:

Does Student Doe currently reside with her mother in the town of North Smithfield?

- Assuming that Student Doe is not a resident of North Smithfield, did Student Doe attend North Smithfield High School during the 2010-2011 school year under circumstances of homelessness that would justify application to her of R.I.G.L. 16-64-8 to enable her to complete her senior year in her original town of residence?

Findings of Relevant Facts:

- As a result of a fire that destroyed the house in which Student Doe and her family resided in January of 2010, Student Doe and her family were forced to move from North Smithfield to reside with a friend in Douglas, Massachusetts. Tr. p. 4. Prior to the fire, the family resided in North Smithfield and Student Doe and her brother attended North Smithfield schools. Tr. p.4.
- Student Doe and her brother were allowed to continue to attend North Smithfield schools through the end of the 2010-2011 school year. Mrs. Doe provided information to school officials during this time that she and the co-owner of the property were in the process of rebuilding. Tr. pp.4, 7-8.
- Student Doe, who is seventeen (17) years old, completed her junior year at North Smithfield High School in June of 2011. Tr. p. 17-18, 27-28.
- Student Doe attended the first day of school in September of 2011, but because the Superintendent had become aware of facts that indicated the prior information Mrs. Doe had provided to the district as to her ownership interest in the North Smithfield property and her relationship with the person she described as a “co-owner” of that property were untrue, Student Doe was asked to leave. Tr.pp. 9-11, 25 and 31.
- On the first day of hearing in this matter (September 29, 2011), Student Doe’s mother indicated to North Smithfield school officials that she currently resided in North Smithfield. She provided the School Department with a copy of a “Residential Lease” documenting her rental of an apartment in North Smithfield beginning on September 14, 2011. Resp. Ex. 1; Tr.pp. 28 and 44; The signature of the lessor had been placed on this document by Student Doe’s mother. When the Superintendent contacted the lessor and met with him he confirmed that the person identified as the “lessor” did in fact own the property, but that he had not entered into a written lease agreement with Student Doe’s mother and had not signed the lease Mrs. Doe had given to school officials.

- At some point during the month of October, Student Doe’s mother also provided the School Department with a copy of a National Grid utility bill mailed to her at P.O. Box 956, Slatersville, Rhode Island for gas service at the North Smithfield apartment where she claimed she lived in with her daughter. Petitioner’s Ex. Tr. p.16.
- Student Doe’s mother also provided school officials with an affidavit to document her family’s residency within the district. She submitted a sworn affidavit stating that she and her daughter resided in North Smithfield at the address for which she had provided the written “lease”. The date identified as the beginning of the family’s residency in the town had been left blank on the typewritten affidavit and was filled in with the handwritten date of October 1, 2011. Resp. Ex.2; Tr. pp. 6 and 16.
- Student Doe’s mother has declined to give permission to allow a representative of the North Smithfield School Department to view the interior of the apartment to confirm that the family actually lives there. Tr. p. 39.
- Student Doe’s brother currently attends schools in Douglas, Massachusetts. Tr. p.33.¹

Positions of the Parties:

The Petitioner:

The Petitioner contends that she and her daughter currently reside in the apartment they rent in the town of North Smithfield. She confirmed this fact in her testimony. She has provided documentation of residency to the district in the form of her sworn affidavit, a lease, and a utility bill. On its website, the North Smithfield school district identifies this documentation as sufficient verification of residency for school purposes. However, she argues that because of personal animus between the Petitioner and the Superintendent, the district has unjustifiably called her daughter’s

¹ In her testimony, Mrs. Doe stated that her son does not reside with her and attends school in Douglas, Massachusetts. Tr. pp. 33-34.

school residency into question, refused to accept the customary documentation and has conducted an intrusive investigation into her personal life. Without good reason, district officials have refused to allow her daughter to remain enrolled at North Smithfield High School and to finish her senior year. Officials of the district disenrolled Student Doe on the first day of the school year.

The issue of the Petitioner's credibility should not undermine her assertion that she and her daughter currently reside in North Smithfield. However, if there are still questions that remain unresolved as to where Student Doe and her mother currently reside, Student Doe should nonetheless be permitted to complete her senior year in North Smithfield under the provisions of R.I.G.L.16-64-8. This statute enables a student to complete his or her senior year if their residency changes when they are "about to enter" the senior year. There were no residency issues that existed when the house at which the family resided burned down in January of 2010. The district does not dispute the fact that the family was temporarily displaced from North Smithfield. Under these circumstances, Student Doe should be allowed to resume her studies at North Smithfield High School so that she can complete her senior year and graduate with her class in June of 2012.

North Smithfield School Committee:

The School Committee doesn't contest the fact that Student Doe and her family resided in North Smithfield up to January of 2010 when a fire destroyed the house they lived in. Although the district does not dispute the fact that the fire temporarily displaced the family and forced them to live with a friend for a time, it is the district's position that it is not clear whether Student Doe and her family became "homeless" at this point. What is reasonably clear is that they do not now reside in North Smithfield and have most likely become permanent residents of Douglas, Massachusetts.

Representatives of the school district accepted the information that the Petitioner provided on her residency status for a twenty (20) month period and permitted Student Doe to remain enrolled at North Smithfield High School. Throughout this period of time, when updates were periodically requested, the Petitioner told school officials that she was the co-owner of the property destroyed in the fire, that she was in the process of re-building the house and she intended to resume her residency there with the man who owned the house with her and with whom she had an ongoing

relationship. As the 2011-2012 school year approached, the Superintendent sought confirmation and documentation of the facts of which school officials had previously accepted Mrs. Doe's word. What came to light as the school year started was that the Petitioner had no ownership interest in the North Smithfield property and that she had not been in a relationship with the owner for some time. Also, the Petitioner's son is now enrolled in school in Douglas Massachusetts. Based on these facts, the district refused to let Student Doe continue in attendance at its high school.

When the residency hearing before the Commissioner was convened on September 29, 2011 the Petitioner told representatives of the district that she had established residency in North Smithfield, renting an apartment there in mid-September. She provided documentation that she and her daughter lived in North Smithfield. The documentation included a written lease for an apartment in North Smithfield, dated September 14, 2011 and purportedly signed by the owner of the property. An affidavit and utility bill were also provided to the district at some point. However, when the Superintendent sought to verify actual residency with the owner of the property and met with him at the address of the apartment in North Smithfield, he indicated that he had never seen the lease and had not signed it.

The cumulative effect of the Petitioner's misrepresentations is that the district does not believe her statements, does not accept her sworn affidavit, and doubts the veracity of her testimony that she and Student Doe currently reside in North Smithfield. Counsel for the district argues that the hearing officer, in making findings of fact, should similarly reject the Petitioner's testimony and other evidence she presents of residency in North Smithfield. The utility bill is not evidence of the family's residency, the district submits, since it was generated on the basis of the fraudulent lease created by the Petitioner. The district points out that, to date, its requests to view the apartment to make a determination as to whether anyone actually lives there have been declined by Mrs. Doe. Implicitly, the argument is that from the Petitioner's refusal to permit access to the apartment, it should be inferred that no one actually lives there. Given the history of misrepresentations, the fabricated lease, her refusal to let school officials view the apartment, counsel for North Smithfield submits that there is insufficient proof that Student Doe and her mother currently reside in North Smithfield. Thus, Student Doe is not entitled to re-enroll at North Smithfield High School and the appeal should be denied and dismissed.

DECISION

The Petitioner has the burden of proof in this case. She has not proven by a preponderance of evidence that she and her daughter reside in the town of North Smithfield. We find that major credibility issues exist, undermining both her testimony and the supporting documentation on which she relies in asserting school residency in North Smithfield. In the event that the Petitioner subsequently satisfies the district's residency requirements, Student Doe could be re-enrolled in North Smithfield High School at that time.

Two aspects of this case are of concern. The first is that Student Doe was unilaterally disenrolled from North Smithfield High School on the first day of school after the district determined that her mother had misrepresented both her connection to the residence in which they previously had lived and her relationship with the owner of that property. Under Rhode Island education law, R.I.G.L. 16-64-2 a child remains eligible to receive education in his or her original town of residence "until his or her residence has been established in another city or town and that city or town has enrolled the child within its school system, unless the commissioner of elementary and secondary education, pursuant to § 16-64-6, has ordered otherwise".

Annual notice is sent to Superintendents of Schools and School Principals reminding them of the law and of their obligation to provide written notice to parents identifying the basis for the district's residency determination and informing parents of the right of appeal to the Commissioner. The Commissioner's office requests that districts use a form in notifying parents/guardians of determinations that a student is not a resident of the district. Use of the form enables parents to determine quickly whether they agree with the residency determination of the district and, if not, seek review of this decision at the state level. Annually, superintendents and principals are advised: "Please keep in mind that students already enrolled and in attendance cannot be disenrolled from school while a hearing is pending before the Commissioner's office, because of the state's compulsory attendance law". A copy of the most recent notice is attached to this decision as "Attachment A".

The purpose of the law and of the process it requires is so that gaps in school attendance can be avoided. In this case, Student Doe who is seventeen (17) years old and, we must point out, played no role whatsoever in any of the proven misrepresentations with respect to her residency status, has not been attending school in any district- in Rhode Island or elsewhere- since she was sent home from North Smithfield High School on the first day of the school year. This fact came to light at the close of the hearing. (Tr.pp. 48-50). If Student Doe is currently residing in Rhode Island, she is subject to our state's compulsory education law, R.I.G.L. 16-19-1 which now extends to students up to age eighteen (18).

The second matter of concern is that there is a suggestion on the record that Student Doe was, at least at some point after the fire displaced her family from North Smithfield, a "homeless child" as that term is used under the final state Regulations under the Stewart B. McKinney Homeless Assistance Act, 42 USC 11431 et seq. Under L-7-7 of the State Regulations, entitled "Duration of Stay-put Placement and Parental Best Interest Determination" a homeless student has a conditional right to remain enrolled in his or her school of origin until he or she has permanent housing "somewhere". In adjudicating this controversy as to whether Student Doe now resides with her mother in North Smithfield, the issue of whether Student Doe acquired "permanent housing somewhere" after the fire in January of 2010 is an open question. The Petitioner has clearly not proven that her residence was in the town of North Smithfield during the 2010-2011 school year and that she moved from there when Student Doe was "about to enter" her senior year.² The provisions of R.I.G.L. 16-64-8 would therefore not apply to Student Doe to entitle her to complete her senior year at North Smithfield High School. However, it is not clear on this record that the family has acquired "permanent housing somewhere" even though the Petitioner asserted in this case that she had secured permanent housing and that it was located in North Smithfield. Based on her lack of credibility, we rejected testimony that she had leased an apartment in North Smithfield and lived there with Student Doe (see Respondent's Ex.2, Affidavit of the Petitioner dated October 13, 2011). The record made by the parties does not answer the question of whether and when Student Doe may have acquired the status of a "homeless" student. If she did, and if her status of homelessness continued up until the time when she was "about to enter her senior year," then

² Both parties agree on the fact that the family did not reside in North Smithfield at any time during school year 2010-2011.

R.I.G.L. 16-64-8 should be liberally interpreted to permit her to complete her senior year at North Smithfield High School. We direct the district to take reasonable steps to inquire with respect to these issues to ensure that any entitlement to continued enrollment that Student Doe may have is not compromised and that Rhode Island's compulsory education laws are not violated.

The fact that Student Doe was unilaterally disenrolled by the district, the potential for violation of our state's compulsory education law, and the suggestion on the record that Student Doe may have been and may continue to be a homeless student, cause us to require these additional steps by the North Smithfield School Department to ascertain this student's status. This matter is remanded to the North Smithfield School Committee and the district's liaison for homeless children and youth³ for action as indicated in this decision.

The appeal is denied and dismissed.

For the Commissioner

Kathleen S. Murray

December 27, 2011

Date

Deborah A. Gist

³ The responsibilities of the district liaison for homeless children and youth are set forth in Section L-7-19 of the Final State Regulations.